

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 19

SEARS, ROEBUCK AND CO.¹

Employer

and

Case 19-RC-14141

INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, GENERAL TEAMSTERS
UNION, LOCAL 959, AFL-CIO²

Petitioner

DECISION AND ORDER

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned

Upon the entire record³ in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The labor organization involved claims to represent certain employees of the Employer.

4. No question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6)(7) of the Act, for the following reasons:

The Employer is engaged in the operation of a retail department store and warehouse in Fairbanks, Alaska. Petitioner seeks a unit of all warehouse employees. The Employer contends that the only appropriate unit includes all employees employed in the store and the warehouse.⁴

¹ The name of the Employer appears as corrected at hearing.

² The name of Petitioner appears as corrected by the parties' post-hearing stipulation.

³ The parties filed briefs, which have been considered.

⁴ At hearing, the Employer contended in the alternative that the smallest appropriate unit must at least include MSAs employed in the store on the loading dock and in the stockroom. In view of the Board's

The Employer's premises, located at 3115 Airport Way in Fairbanks, includes a three-level retail store of about 170,000 square feet, a separate building (including the warehouse) of about 18,000 square feet located about 60 feet from the store, and a large parking lot. There are nine employees, called merchandise support associates (MSAs, herein) employed in the warehouse, and approximately 173 employees overall.

The warehouse MSAs are supervised by Emile Oleson, merchandise processing supervisor, who also supervises four MSAs who work on the loading dock at the store. Based upon the record, I accept the parties' stipulation that Oleson is a statutory supervisor. There are also five MSAs who work in the store's stockroom, located in the basement of the store, and who are supervised by three merchandise support supervisors, Lachelle Gray, Anitra Woods, and Vince Cochran. Based upon the record, I accept the parties' stipulation that Gray, Woods, and Cochran are statutory supervisors.⁵ Oleson, Gray, Woods, and Cochran report to Jill Laird, operations manager, who also supervises the office area in the store, called the Hub. Laird reports to the store manager. The Hub includes a lead and four clericals. One clerical, Donna Young, works in the warehouse.

Merchandise is delivered to the facility by truck. All hard line items, such as tools, hardware, appliances, and electronics, are delivered to the warehouse. Large items, from vacuum cleaners on up to refrigerators, are kept in the warehouse; small items are subsequently moved to the store to be kept in the stockroom there. When a customer purchases an item which is not kept in the store, the customer is directed to a pick-up area at the warehouse. At the warehouse, an MSA receives notification electronically of the purchase, pulls the item from stock, and places it in a bin at the pick-up area. When the customer arrives at the warehouse, an MSA removes the item from the bin and assists in loading it into the customer's vehicle. About 60 to 100 times a day, a customer buys an item in the store which they then pick up at the warehouse. A warehouse MSA testified that on a "good day" warehouse employees are so busy helping customers that they have no time to unload trailers.

Most soft lines, such as clothing, are delivered directly to the store. However, some soft goods must be re-priced to reflect Alaska prices. These include basic items, such as jeans, socks, underwear, and towels. Items requiring re-pricing are taken to the warehouse, where Donna Young-administratively part of the Hub-handles the re-pricing.

The warehouse handles customer returns on all items except clothing. A customer returning an item to the warehouse is given a return ticket by a warehouse MSA, which the customer then takes to a sales associate in the store to get credit or make an exchange.

A shuttle truck operates between the warehouse and the loading dock at the store, making three or more trips per day. The shuttle truck is driven by a warehouse MSA. On occasion, a customer purchases a large item, such as a dishwasher or refrigerator, off the floor. On those occasions, the sales associate calls the warehouse for assistance, and a warehouse MSA goes to the store with a hand truck to assist the customer.

rulings in *A. Harris & Co.*, 116 NLRB 1628 (1956) and *Sears, Roebuck & Co.*, 117 NLRB 133 (1957), as discussed below, it is unnecessary for me to consider such alternative unit contention.

⁵ Laird explained in testimony that in the past there were more stockroom employees, and that the stockroom supervisors are specialized in certain areas of the store, and thus have been kept on even though the number of stockroom employees has diminished.

There are approximately five asset protection employees. They are responsible for locking the warehouse and the store at closing. Employer policy requires that there be at least two employees present in the warehouse at all times when the warehouse is open; if there is a shortage of warehouse MSAs, asset protection employees fill in. Asset protection employees report to an asset protection manager, who reports to Laird. Asset protection employees have responsibilities in the store as well as in the warehouse.

The store is open seven days a week, from 10:00 am to 9:00 pm Monday through Friday; 9:00 am to 9:00 pm on Saturday; and 10:00 am to 7:00 pm on Sunday. The warehouse is open 8:00 am to 9:00 pm on weekdays and Saturdays, and 10:00 am to 7:00 pm on Sundays. Both MSAs and sales associates in the store start at \$7.57 per hour. After six months, MSAs get a 35-cent raise, and annual raises thereafter. Sales associates receive only annual raises. Fine jewelry, footwear, and home improvement sales associates receive a base of about \$5.00 per hour plus commissions. Appliance and electronics sales associates are commission - only.

In the retail department store industry, a separate unit of warehousing employees is appropriate only if: (a) the warehouse operation is geographically separate from the retail store; (b) there is separate supervision of the warehouse employees; and (c) there is no substantial integration among the warehouse employees and those engaged in other store functions. Only where all three of these conditions are met will a separate warehouse unit be approved. *A. Harris & Co.*, 116 NLRB 1628 (1956); *Sears, Roebuck & Co.*, 117 NLRB 133 (1957); *Charrette Drafting Supplies*, 275 NLRB 1294 (1985). A warehouse in the same building is not deemed “geographically separated”. *Roberts, Inc.* 272 NLRB 1318 (1984). Further, the Board has found that a warehouse located at a different street address less than one block away from the retail store is not geographically separate. *Casual Furniture Mart, Inc.*, 211 NLRB 616 (1974). Here, the warehouse is located on the same property as the retail store, a mere 60 feet apart, which does not amount to the requisite geographic separation.

There is common first level supervision of the warehouse MSAs and the loading dock MSAs in the store, and common second level supervision of the warehouse MSAs and other employees in the store, including the HUB employees and asset protection employees. There are also MSAs stationed in the store stockroom, under separate supervision, seemingly performing the same kind of work as the other MSAs.

The work of the warehouse employees is functionally integrated with that of sales associates in the store, in that customers who purchase larger items in the store then pick up those items from the warehouse, and customers returning items other than clothing return those items to the warehouse, where they are given paperwork to take to a sales associate in the store to receive credit for the return. Thus, both sales associates in the store and warehouse employees are actively involved in the progressive steps of the sale or return transaction, albeit different segments of the transaction. At times warehouse employees spend all of their time performing the customer-assistance function. Accordingly, there is substantial integration between the store and the warehouse.

In sum, none of the required three *Harris* criteria is met. I conclude, therefore, that a unit limited to warehouse employees is not an appropriate unit, and that the only appropriate unit is one including all employees employed by the Employer at its Fairbanks, Alaska, facility. Inasmuch as Petitioner stated in the record that it is unwilling to go to election in such overall unit, I shall dismiss the petition.

ORDER

IT IS HEREBY ORDERED that the petition filed herein be, and it hereby is, dismissed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by October 3, 2001.

DATED at Seattle, Washington, this 19th day of September 2001.

Paul Eggert, Regional Director
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